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Via Electronic Mail Filing

June 19, 2008

Office of the Executive Secretary National Labor Relations Board 1099 14th Street, N.W. Washington, D.C. 20570

Re: Case No. 7-RC-23167
Unisys Corporation, Employer, and
The International Union, United Automobile,
Aerospace and Agricultural Implement Workers
of America, AFL-CIO, Petitioner

Dear Sir/Madam:

Enclosed is Unisys Corporation's Brief in Opposition of Petitioner's Request for Review and Proof of Service.

Sincerely,

HONIGMAN MILLER SCHWARTZ AND COHN LLP

Russell S. Linden

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RSL/cml enclosure

cc: Stephen Yokich, Esq., w/enc., via Federal Express delivery and facsimile Stephen Glasser, w/enc., via Federal Express delivery and facsimile

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UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNISYS CORPORATION,

Employer

Case No. 7-RC-23167

and

THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO,

Petitioner.

UNISYS CORPORATION'S BRIEF IN OPPOSITION OF PETITIONER'S REQUEST FOR REVIEW

Employer Unisys Corporation's ("Unisys") original Opposition to Petitioner's Request for Review is attached and is incorporated herein. In addition, Unisys states that Petitioner International Union UAW ("Petitioner") provides no support for the UAW's characterization of the bargaining history of the two separate bargaining units as a "pro forma affair". The record otherwise establishes that the requisite community of interest is lacking. Accordingly, the petition should be dismissed.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP Attorneys for Employer Unisys Corporation

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Dated: June 19, 2008

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Employer

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THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO,

Petitioner.

EMPLOYER'S OPPOSITION TO PETITIONER'S REQUEST FOR REVIEW

I. <u>INTRODUCTION</u>

Petitioner International Union, UAW ("Petitioner") has filed its request for review of the Regional Director's decision to dismiss its RC petition which impermissibly selectively sought to add one employee to an existing bargaining unit. In dismissing the petition, the Regional Director ruled in accord with settled Board precedent that a self-determination election for one individual and excluding the other employees who shared a strong community of interest is impermissible. (Regional Director's Decision ("Director's Decision"), p 15). Petitioner's request for review provides no compelling reason for granting review and otherwise is a recapitulation of the same arguments correctly rejected by the Regional Director. Accordingly, the request for review should be denied.

For more than forty years, Employer Unisys Corp. ("Unisys" or "Company") had two bargaining units at its Plymouth, Michigan facility, represented by Locals 1313 and 1440 of the Petitioner International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO ("Petitioner"). Since 1964, Local 1313's bargaining unit has consistently included the job classifications of general production and electronic product technicians. Local 1440's bargaining unit dating back to 1967 was limited to only plant clerical employees. Those two bargaining units consistently had separate collective bargaining agreements with employees in different classifications performing different job functions under different working conditions. In June 2007, Unisys lawfully withdrew recognition of Local 1440 because its bargaining unit consisted of one employee, Gerald Sarna ("Sarna"), who occupied the only job classification covered by the extant agreement; senior material control clerk. In July 2007, Sarna's job title was changed to production control assistant and given additional job duties. At the same time, some of Sarna's compensation and benefits changed. Seeking to avoid the Board's longstanding prohibition on one-person units, and disregarding Sarna's historic

exclusion from Local 1313's bargaining unit, Petitioner requested an <u>Armour-Globe</u> selfdetermination election limited to one employee, Sarna. The conducting of such a selective election is impermissible as the Regional Director correctly concluded.

Significantly, Sarna does not share the requisite community of interest with Local 1313 unit members. That fact is confirmed by the forty-year bargaining history of separate units. Sarna's duties are dissimilar to the production, testing and packing functions of Local 1313 unit employees. Sarna remains primarily responsible for handling shipments of emergency parts to customers and field personnel, which requires him to remain on-call after working hours and on weekends. As a result, Sarna returns to the facility between three and five times per week and works alone in that capacity. No Local 1313 members perform similar functions or have on call status. In addition, Sarna's job entails different training requirements, minimal interaction with Local 1313 unit members, different supervision, and a different compensation and benefits scheme.

It is well-settled that a bargaining unit cannot be expanded piecemeal through a oneperson election that does not include other employees with similar interests to Sarna. As the
record establishes and the Regional Director correctly concluded, rather than sharing a
community of interest with Local 1313 unit members, Sarna's interests are more closely aligned
to the other unrepresented plant clerical employees in his department working under the same
supervisor. Those employees (1) perform similar job functions, including handling emergency
part orders, (2) cover for Sarna when he is absent or taking breaks, (3) have similar
compensation and benefits, and (4) interact with Sarna on a daily basis. Moreover, the Petitioner
improperly sought to exclude the five other production control assistants. As the Regional

Director concluded, the failure to include the entire alleged residual unit warranted dismissal of the petition. For the following reasons, the Petitioner's request for review should be denied.

II. STATEMENT OF FACTS

A. Unisys's Plymouth Facility

Unisys manufactures several lines of large scale and desktop check processors used at both federal reserve banks and commercial banks. (Tr. 25). The Unisys Plymouth facility contains a number of different functions including engineering, accounting, information technology, manufacturing, warehousing and sales. (Tr. 11). Four buildings comprise the Plymouth facility. (Tr. 13-14). All of the buildings are joined together; building 1 is adjoined to building 2, and building 3 is adjoined to building 4. (Tr. 110-111). A series of breezeways connect each building. (Tr. 110-111). The main hallway at the facility runs through all of the buildings. (Tr. 110-111). Employees may enter the facility and swipe their timecards at any of the buildings' entrances. (Sarna Tr. 206-207).

B. Forty-Year History of Two Separate Bargaining Units

For more than forty years at Plymouth, there were two separate bargaining units represented by two different local unions affiliated with the Petitioner. In 1964, following a Board election, Unisys entered into a collective bargaining agreement with Local 1313.² (Decision, p 3; Bedy Tr. 12; EX 10).³ That agreement designated Local 1313 as the exclusive bargaining representative for all hourly-rated production and maintenance employees and it expressly excluded employees covered by other collective bargaining agreements with Unisys. (Decision, pp 3 – 4; EX 10, Art. I). After a separate representation election, Local 1440 was

¹ The hearing was conducted on January 23 and 24, 2008. The hearing transcript is referred to as "Tr. __."

²Unisys was formerly known as Burroughs Corporation. (Tr. 304).

³ Employer exhibits are designated as "EX __." Union exhibits are designated as "UX __."

certified as the bargaining representative for the plant clerical employees. (Tr. 12-13). In February 1967, Unisys entered into a collective bargaining agreement with Local 1440 covering that group of employees but expressly excluding employees covered by other collective bargaining agreements, i.e., Local 1313. (Decision, p 4; Tr. 12; EX 11, Art. I).

For the next forty years, the Local 1440 plant clerical job classifications were excluded from the Local 1313 unit. (EX 4, 11; UX 1-5). For example, Local 1313's two most recent agreements dated March 23, 2002 and April 24, 2007, do not include plant clerical employees and excluded employees covered by the other collective bargaining agreements (i.e., the Local 1440 agreement). (UX 1, Art. I; EX 1, Art. I).

The last agreement between Unisys and Local 1440 covered the period of March 30, 2002 through March 25, 2006. (EX 4). Consistent with the parties' long history, the recognition clause in the Local 1440 agreement included only plant clerical employees and excluded "employees presently covered by existing collective bargaining agreements between labor organizations and the Company." (EX 4, Art. I). The final agreement covered only one classification, senior materials control clerk. (Tr. 36-37, 39; EX 4, Art. I). After it expired in March 2006, the Local 1440 agreement was extended one year, or until March 25, 2007. (Tr. 40, 183; EX 4).

C. Unisys Lawfully Withdraws Recognition

Over time, the number of Local 1440 employees dwindled through layoffs and attrition. (EX 9). For many years, the only classification was the senior material control clerk. (Tr. 100-101, 118). Local 1440 had approximately 6 to 8 members in 1998. (Tr. 210). By spring, 2007,

Sarna was the only actively employed Local 1440 member occupying the senior material control clerk position.⁴ (Tr. 40).

In spring, 2007, the UAW revoked Local 1440's charter and seized its bank accounts. (Tr. 185-186). On June 15, 2007, consistent with Board law,⁵ Unisys withdrew recognition of Local 1440 based on the undisputed fact that the bargaining unit consisted of a single employee; Sarna. (Tr. 40; EX 9).

D. The Local 1313 Bargaining Unit

Since 1990, the only job classifications covered by the Local 1313 agreement have been general production and electronic product technicians. (Tr. 20). Currently, Local 1313 represents approximately 125 employees in those classifications. (Tr. 19-20). There are approximately 110 general production employee and six of them are janitors. (Tr. 20, 25-26). Those employees work in the production and manufacturing engineering department. (EX 8). All of the general production employees, except the janitors, are supervised by either Steven Steen, Jerry Kiesel or Gayle Rodriguez. (Decision, p 4; Tr. 28). The janitors are supervised by Michael Safranski. (Tr. 30). They perform no assembly function. (Tr. 30). There are 14 electronic product technicians who are supervised by Jerry Kiesel. (Tr. 32).

Local 1313 members, except for the janitors, may choose between two different working hours; either 7 a.m. to 3:30 p.m. or 8 a.m. to 4:30 p.m. (Tr. 32-33). The janitors' hours of work are from 9 a.m. to 12:30 p.m. (Tr. 33). Over ninety percent of the Local 1313 members work from 7 a.m. to 3:30 p.m. (Tr. 33, 55).

⁴ Sarna's hiring date was August 19, 1974. (Tr. 47). He had been a member of Local 1440 since beginning his employment. (Tr. 47). Curiously, while testifying, Sarna never expressed a desire to be represented by Petitioner.

⁵ See D&B Masonry, 275 NLRB 1403, 1408 (1985).

E. The General Production Classification

General production employees primarily assemble the product line of check processing equipment manufactured by Unisys. (Tr. 25). There are no educational requirements for general production workers. (Tr. 33). According to their written job description, general production employees are mainly responsible for product assembly, functional testing and packing. (EX 2). General production employees are assigned to one of ten or twelve different departments and perform their tasks in work cells. (Decision, p 5; Tr. 26-28). The departments are broken into different functions and product lines. (Tr. 26).

F. The Electronic Product Technician Classification

The electronic product technicians primarily test and troubleshoot the assembled products. (Decision, p 5; EX 3; Tr. 31). Most of those employees work in a test room in building 2 and a couple of them are assigned to specific product lines in building 2. (Decision, p 5; Tr. 31). A couple general production employees are regularly assigned to the testing room. (Decision, p 5; Tr. 31). Jerry Kiessel supervises all of those employees. (Tr. 32).

The job qualifications for electronic product technicians include an educational requirement of a two-year electronics certificate through a training school or community college. (Tr. 33). General production employees can become electronic product technicians if they complete the educational requirement and there are openings posted and bids taken. (Decision, p 5; Tr. 34).

G. Local 1313 Compensation and Benefits

Pursuant to the Local 1313 agreement, general production workers are paid between \$11 and \$19.88 per hour. (Decision, p 5; Tr. 34). Electronic product technicians are paid between \$20.66 and \$25.05 per hour. (Decision, p 5; Tr. 34). Performance reviews are not done for Local 1313 bargaining unit employees and they are not eligible for merit-based pay increases.

(Tr. 197, 202, 51). Local 1313 unit members also receive negotiated cost of living increases. (Tr. 51).

Pursuant to the agreement, Local 1313 unit employees also receive six bargained-for service days, which are accrued based on their time with the Company. (Tr. 57; EX 1, Art. XVII). Bargaining unit employees, with some exceptions, are required to use their vacation during the Company shut-down period. (Tr. 59). Local 1313 unit employees are covered by Unisys's short term disability plan but must either use vacation or go unpaid for the first five days of any short-term disability leave. (Tr. 58). Short term disability benefits are paid at two-thirds of a bargaining unit employee's wages. (Tr. 58).

H. Sarna's Job

While a Local 1440 member, Sarna's job title was senior material control clerk. (Decision, p 6; Tr. 47). As a senior material control clerk, Sarna's responsibilities included receiving non-bar coded packages that arrived at the dock, shipping and a few stockroom transactions. (Tr. 126-128). His primarily responsibility was handling emergency orders and next flight out orders of Company products and parts. (Tr. 126-127, 128). The essential element of his job was ensuring that repair parts were delivered as quickly as possible. (Tr. 150). The Local 1440 agreement described his job duties:

- Service Order Processing Arranging for the shipment of parts to appropriate locations, including processing emergency orders.
- Order Management Prioritizing the shipment of various parts and fulfillment of customer orders.
- Receiving Entering data in the Company computer system to produce dock receipts and performing related follow up with the purchasing department.
- Stockroom Entering data in the Company computer system for stockroom transactions where necessary.
- Shipping and Traffic Preparing paperwork necessary for the shipping process.

(EX 4 at 85; Tr. 40-41).

Sarna performs his job duties at two computer terminals designated for his exclusive use. (Tr. 274, 277). One computer is located in his cubicle, which he uses to process orders and communicate via e-mail with buyers and vendors. (Tr. 129, 136, 260, 266, 276, 277). Half of his work day is spent using his computer in cube city. (Tr. 48, 260, 266-267, 276). For one to two hours per day, he also exclusively uses a computer on the receiving dock that is linked directly to shipping companies for the purpose of inputting shipping information. (Tr. 48-49, 150-151, 277). Sarna has also received training on computer systems not used by Local 1313 unit members, including the GLS parts distribution system and the OMS system used to ship international orders. (Tr. 142-144). Sarna also uses the BAMCS manufacturing database program. (Tr. 142-143).

Effective July 2, 2007, Sarna was "reclassified to the role of" production control assistant. (Decision, p 6; EX 5; Tr. 79-80, 239, 258). In that job, Sarna still performs his prior job duties, including processing emergency orders and assuring the shipment of parts to customers and client service technicians in the field. (Decision, p 7; Tr. 126-128, 276-277, 280). Emergency orders are the result of calls received from field engineers at customer sites who may need a part "to handle some maintenance or if a machine is down." (Tr. 127-128). Those emergency orders can occur at any time during the day and week. (Tr. 128). However, beginning in July 2007, Unisys transitioned to a new payment systems business unit that took over printer repairs. (Tr. 126-127). That work involves printers not manufactured in Plymouth but by other OEM's. (Tr. 127). As a result, Sarna took on additional duties, including working with new product lines and with new vendors to drop ship parts directly to customers. (Decision,

p 7; Tr. 127, 260-261). More than half of Sarna's work now involves printers not manufactured in Plymouth. (Tr. 127).

I. <u>Sarna's Supervisor</u>

For five years, Sarna has been supervised by Beth Fisher-Smith, the material planning order management manager. (Tr. 47). Besides Sarna, she also supervises two material analysts and two permanent shipping and receiving clerks. (Tr. 147, 166, 170). Fisher-Smith does not supervise any members of the Local 1313 bargaining unit. (Tr. 47-48).

J. Sarna's Interaction with Other Employees

Sarna interacts with a number of non-union employees to accomplish his tasks including shipping and receiving clerks, material analysts and procurement analysts who are supervised by, among others, his supervisor, Beth Fisher-Smith. (Tr. 133-134, 265). Sarna also regularly works with outside vendors, CPAC personnel in Blue Bell, Pennsylvania, and field engineers, who may be located anywhere in the United States. (Tr. 133-134, 260).

Like Sarna, the two shipping and receiving clerks who are supervised by Fisher-Smith remain on call after working hours and carry a Company issued cell phone for that purpose. (Tr. 165). The shipping and receiving clerks perform many of the same types of emergency order functions like Sarna. (Tr. 165). In fact, those employees perform Sarna's job when he is absent and unavailable on an on call basis. (Tr. 171, 176, 281). Besides shipping and receiving clerks, material analysts supervised by Fisher-Smith perform a similar job as Sarna and also cover for him when he is absent. (Tr. 155-156). Finally, procurement analysts supervised by Fisher-Smith work with different suppliers to buy parts. (Tr. 154, 242, 267).

Approximately half of Sarna's work day is spent at his desk in a cubicle office area staffed by non-union employees. (Decision, p 7; Tr. 48, 267, 276). No Local 1313 employees work in that area. (Tr. 48). At his desk, which has a computer, Sarna spends approximately four

hours per day following up on orders and communicating via e-mail with outside vendors, field engineers, and buyers. (Tr. 48, 260, 266-267, 276). He also interacts with shipping and receiving clerks in the warehouse in building 3. (Tr. 263). He spends on average 15 minutes daily in the stockroom in building 3. (Tr. 281). During that time, Sarna interacts with the shipping and receiving clerks supervised by Fisher-Smith; Diane Reno, Lynn Burroughs and Jeff Mills. (Tr. 281). Sarna routinely asks other non-bargaining unit employees, such as analysts, for help completing tasks and also provides assistance to those analysts. (Tr. 290).

Sarna has limited interaction with Local 1313 unit members. He works with department coordinators in each of the different departments in building 2 to procure parts. (Tr. 265, 282). He does not, however, visit each department every day. (Tr. 282). He also spends approximately two hours per day working at his desk on the receiving dock handling the shipping, receiving and processing of parts. (Tr. 150-151, 261-262). Sarna has a desk with a computer at the receiving dock, and no one else uses that computer. (Tr. 48-49, 277). As set forth above, this computer is linked directly to shipping companies; Mr. Sarna does not use it to interact with Local 1313 unit members. (Tr. 277). For lunch, Sarna either eats alone or goes home. (Tr. 267, 296).

K. <u>Sarna's Working Hours</u>

Sarna works from 8 a.m. to 4:30 p.m. except on the days he leaves early to bowl. (Tr. 33, 55, 271-272). Fisher-Smith requested that Sarna start at 8 a.m. specifically because carriers do not arrive until later in the morning. (Tr. 173-174). His work hours have not changed from when he was in Local 1440. (Tr. 271-272).

Because his job duties include the important emergency component duties, Sarna is regularly on-call after working hours on weekdays and weekends. (Tr. 55, 280). He carries a Company issued cell phone for this purpose. (Tr. 55, 280). Local 1313 members do not process

emergency orders, nor do they have Company cell phones. (Tr. 128-129). As Sarna testified, he returns to the office to process emergency orders between three and five times per week. (Tr. 280). When Sarna works after hours or on weekends, he does not work with any Local 1313 members. (Tr. 280). Moreover, whenever Sarna is absent, Fisher-Smith's material analysts and shipping and receiving clerks in his business unit perform his job duties. (Tr. 101, 131, 154, 171, 278-279).

L. Sarna's Compensation and Benefits

Sarna receives the same or similar compensation and benefits as non-union employees throughout the Unisys facility, such as shipping and receiving clerks. (Decision, p 6; Tr. 169-171). As part of his compensation, Sarna is eligible for merit-based pay increases. (EX 5; Tr. 51). Non-bargaining unit employees like Sarna also receive performance evaluations and salary increases as a part of Unisys's compensation process. (Tr. 76, 211-212). Because of his on-call duties, Sarna is also eligible for availability pay, which is compensation paid to Unisys employees who are on-call and are required to come to work outside of their normal shift hours. (Tr. 54; EX 5). The shipping and receiving clerks supervised by Fisher-Smith receive identical availability pay as Sarna. (Tr. 169). Sarna and these shipping and receiving clerks also receive different call back pay than bargaining unit members. (Tr. 53-54; Employer's Ex. 1, Art. XII).

Sarna is also eligible for Unisys's occasional absence policy, which allows an employee to take time off for whatever reason with the approval of his or her manager. (Employer's Ex. 5; Tr. 57). That benefit is different than the service days provided to Local 1313 unit members pursuant to the agreement. (Tr. 57). Unlike Local 1313 unit members, Sarna and all other non-bargaining unit employees do not accrue service days. (Employer's Ex. 5; Tr. 57, 238). He does, however, receive vacation days that he can use at his discretion. (Employer's Ex. 5). Sarna, shipping and receiving clerks, material analysts and all other non-bargaining unit

employees also participate in Unisys's short-term-disability plan, which covers 100% of missed time from the first day missed for up to 26 weeks, without the need to take vacation days. (Tr. 58).

M. Other Production Control Assistants

Including Sarna, there are six production control assistants at the Plymouth facility. (Tr. 47, 78, 230, 234). Like Sarna, none of those employees is a Local 1313 bargaining unit member. (Tr. 237). The other production control assistants work in buildings 2, 3, and 4 performing a variety of tasks. (Tr. 239-240). Notably, all of them use the same computer systems as Sarna. (Tr. 235). Three of those employees, Debra Abbott, Charles Mullins and Martin Marcot, work in the reclamation area in building 4 and are supervised by Alan Yew. (Tr. 141, 231, 232). They perform inventory management with respect to products returned to Unisys from the field. (Tr. 232). Another production control assistant, Frank Zupancic, works in the print shop pack area in building 4 and is supervised by Sue Erdman. (Tr. 232). He is responsible for literature and software distribution. (Tr. 232, 235). A fifth production control assistant, Elizabeth McDougal, works in building 3 and is supervised by Bob Sheeler. (Tr. 231).

III. ARGUMENT

A. THE REQUEST FOR REVIEW SHOULD BE DENIED

It is well settled that the Board will grant requests for review only where compelling reasons exist and those reasons are specified in Board Rules and Regulations 102.67(c). None of those reasons exist here. Contrary to the Petitioner's contention, this case does not involve an absence of reported Board precedent. Instead, the Regional Director properly dismissed the petition in accordance with settled Board precedent requiring that all unrepresented employees residual to an existing unit be included in an election to represent them on a residual basis. (Decision, p 15). Thus, there is no basis for granting the request for review.

B. THE REGIONAL DIRECTOR PROPERLY CONCLUDED ORDERING AN ARMOUR-GLOBE ELECTION WOULD BE INAPPROPRIATE

The Regional Director properly concluded that an Armour-Globe election is inappropriate because the proposed voting group of one employee excludes the other unrepresented residual plant clerical employees similar to him. (Decision, p 15). The Board has consistently held that groups of employees excluded from established bargaining units constitute appropriate residual units, provided they include all the unrepresented employees of the same type covered by the petition. See Fleming Foods, 313 NLRB 948, 949-950 (1994). "Thus, the Board requires that all unrepresented employees residual to an existing unit be included in an election to represent them on a residual basis." See Syracuse University, 325 NLRB 162, 167 (1997); Oakwood Hosp. Corp., 219 NLRB 620, 620 (1975) ("In view of the fact that the Petitioner does not seek to add all of the unrepresented [service clerical employees] to the existing unit, we find that the requested voting group is not appropriate for the purposes of holding a Globe election."); see also Mary Thompson Hosp., Inc., 242 NLRB 440, 441 (1979) ("To be appropriate, the voting group [in an Armour-Globe election] must at least include all unrepresented employees of the same type or category included in the existing unit "). Thus, an Armour-Globe election must include all unrepresented employees sharing the same interests as Sarna.

Here, the petition did not include all other unrepresented employees with whom Sarna more closely shares a community of interest.⁶ For instance, unrepresented shipping and receiving employees perform the same critical job function as Sarna of fulfilling emergency part orders. (Tr. 165). Like him, those employees remain on call after working hours and carry a

⁶ To avoid this reality, Petitioner asserts that there should be no need to consider the job Sarna has performed since July, 2007, or for six plus months prior to the petition's filing. (Petitioner's request at 8). As the Regional Director correctly noted, community of interest "must be evaluated based on" Sarna's current position and not his prior position. (Decision, p 15).

company cell phone. (Tr. 165, 169). They also receive the same type of pay and benefits as Sarna. (Tr. 169-171). Importantly, those employees have the same supervisor as Sarna, Fisher-Smith. (Tr. 165, 171, 176, 281). They also cover for him when he is absent. (Tr. 165, 171, 176, 281). In addition, they are trained on the same specialized computer programs, which are not used by Local 1313 unit employees. (Tr. 172). Sarna generally interacts with these employees for fifteen minutes each day. (Tr. 281).

Other positions likewise share more of a community of interest with Sarna than does Local 1313. Like the shipping and receiving clerks supervised by Fisher-Smith, materials analysts cover for Sarna when he is absent. (Tr. 156). Sarna testified he has been working with three particular material analysts for over fifteen years, and he interacts with them on a daily basis. (Tr. 287-291). Notably, some material analysts have cubicles close to Sarna in "cube city," and several are supervised by Fisher-Smith. (Tr. 243-244, 292). Sarna also interacts daily with procurement analysts, who work with different suppliers to buy parts. (Tr. 154, 242, 267). Finally, there are five other production control assistants besides Sarna, all of whom receive the same benefits and use the same system applications as Sarna. (Tr. 230, 234).

Despite Sarna's closer similarity to the unrepresented shipping and receiving clerks, material analysts, procurement analysts and other production control assistants, the Petition impermissibly sought an election involving Sarna only. It is well established that it is improper to have an <u>Armour-Globe</u> election where the petition excludes these relevant employees from the voting group. Accordingly, the petition was properly dismissed.

C. SARNA LACKS THE REQUISITE COMMUNITY OF INTEREST WITH LOCAL 1313 MEMBERS

An <u>Armour-Globe</u> election is only permissible if the voting employees share a community of interest with the existing bargaining unit. <u>G.L. Milliken Plastering</u>, 340 NLRB

1169, 1170 (2003). In determining whether particular employees have a community of interest sufficiently distinct from other employees, the Board considers: (1) similarity in skills, interests, duties, and working conditions; (2) functional integration of the plant, including interchange and contact among employees; (3) the employer's organizational and supervisory structure; (4) the employee's desire; (5) bargaining history; and (6) the extent of union organization among the employees. See Pittsburgh Paint & Glass Co v. NLRB, 313 U.S. 146, 153 (1941); see also Aztar Indiana Gaming Co., LLC, 349 NLRB No. 59 (2007). The Board also gives "substantial" weight to the prior history of collective bargaining. Turner Indus. Group, LLC, 349 NLRB No. 42 (2007). Examination of these factors establishes that Sarna lacks a community of interest with Local 1313 members.

1. Bargaining History and the Extent of Union Organization

Generally, the Board is reluctant to contravene a unit established by collective bargaining. See Red Coats, Inc., 328 NLRB 205, 207 (1999). Therefore, a party challenging the appropriateness of a historical bargaining unit bears a heavy evidentiary burden. Trident Seafoods, Inc., 318 NLRB 738 (1995). It is well settled that the existence of a significant bargaining history weighs heavily in favor of a finding that a historical unit is appropriate, and that the party challenging the historical unit bears the burden of showing that the unit is no longer appropriate. See Canal Carting, Inc., 339 NLRB 969, 970 (2003); Children's Hospital of San Francisco, 312 NLRB 920, 929 (1993). Petitioner cannot satisfy that burden.

No basis exists for disregarding the forty-plus years old bargaining history concerning the Local 1313 bargaining unit. For forty years, Sarna's position was specifically excluded from the Local 1313 unit. (EX 4, 11; UX 3, 5). For more than thirty years, Sarna's employment was governed by a separate collective bargaining agreement from the Local 1313 agreement. (EX 4, 11; UX 3, 5). Rather than seek to add the Local 1440 classification or Sarna to the Local 1313

unit during the negotiations for the recently-ratified existing Local 1313 agreement, Petitioner instead repeated its historic exclusion from the unit description. (EX 1, Art. I). Although Petitioner has represented the units for forty-plus years, until now it has never sought to include those employees in the Local 1313 unit. There otherwise have been no significant operational changes or changes in job functions which might warrant disregarding the bargaining history. See, e.g., Batesville Casket Co., Inc., 283 NLRB 795 (1987). After Unisys lawfully withdrew recognition from Local 1440, Sarna's separate status was maintained when he was reclassified as a production control analyst. (EX 5). Moreover, in addition to other duties, Sarna currently performs the same job duties today as he did while a member of the separate Local 1440 bargaining unit. (Tr. 276-277).

2. <u>Lack of Similarity in Job Function, Duties and Skills with Local 1313</u> Bargaining Unit

Sarna has consistently performed different job functions and duties and uses different skills than Local 1313 unit members. While Local 1313 unit members, except for six janitors, spend their time at specific work stations assembling and testing Unisys products, Sarna spends half of his day in a cubicle office area staffed by non-unit employees. (Tr. 25-26, 48, 205, 260, 267, 276). Moreover, unlike Local 1313 unit members, Sarna's defining job duty is his fulfillment of emergency part orders, both during the day, after working hours and on weekends. (Tr. 126-127, 128, 150). To fulfill this function, Sarna remains on-call to return to Unisys at any time and carries a cell phone. (Tr. 55, 280). No Local 1313 unit members perform a similar function or remain on call. (Tr. 128-129). Much of that on call time is spent outside the presence of Local 1313 unit members. Sarna also received training on computer systems not used by Local 1313 unit members. (Tr. 142-144).

3. Lack of Interchange and Integration with Local 1313 Bargaining Unit

There is little, if any, interchange between Sarna and Local 1313 unit members. In fact, his job is performed by non-unit members when he is absent; Local 1313 unit members do not take his place. (Tr. 131, 154, 278-279). In addition, there is limited functional integration between Sarna and Local 1313 unit members because they have distinct roles in Unisys's business. While Local 1313 unit members perform assembly, testing, and packing of Unisys's check processing equipment, Sarna is primarily engaged in customer service operations working with vendors, shipping companies, customers and customer service technicians to ensure customers and field personnel receive the parts they need. (EX 2-3; EX 4 at 85; Tr. 25, 31, 126-128, 280). Much of his time is spent handling emergency orders involving printers manufactured elsewhere and not assembled by Local 1313 unit members. (Tr. 127, 260-261). Sarna is not even in the same department as Local 1313 unit members. (EX 8). Thus, the functional integration of Sarna and Local 1313 unit members is minimal.

4. <u>Limited Contact with Local 1313 Unit Employees</u>

While Sarna has contact with Local 1313 unit members in handling the shipping, receiving and processing of parts for the assembled check processing machines, that interaction is minimal. Sarna spends the first half of his working day in his office cubicle in an area shared with unrepresented analysts, managers, and engineers. (Tr. 48, 267, 276). For lunch, Sarna either eats alone or goes to his house, and he does not interact with unit members at this time. (Tr. 267, 296). After lunch, he travels to different departments and the receiving dock as necessary to check on orders and process shipments, spending as little as five or ten minutes dealing with Local 1313 coordinators in the departments he visits. (Tr. 277, 282). Thus, unlike Local 1313 unit members, who have assigned work stations and work side-by-side with each

other all day long, Sarna has only fleeting contact with unit members during the second half of his workday while checking on part orders and shipments. (Tr. 263, 282-283).

5. <u>Differences in Working Hours from Local 1313 Bargaining Unit</u>

Sarna's working time is significantly different than Local 1313 unit members. Over ninety percent of the unit member work from 7 a.m. to 3:30 p.m., while Sarna works from 8 a.m. to 4:30 p.m. (Tr. 33, 55, 271-272). Moreover, unlike unit members, Sarna is on call several days a week and on weekends to handle emergency situations, which occurs between three and five times per week. (Tr. 55, 280).

6. <u>Different Pay and Benefits from Local 1313 Bargaining Unit</u>

Sarna, unlike unit members, is eligible for merit-based pay increases. (EX 5; Tr. 51). Unlike Sarna, Local 1313 unit members receive negotiated cost of living increases. (Tr. 51). Sarna's call back pay is also calculated differently than for Local 1313 unit members. (Tr. 53-54; Ex. 1, Art. XII). Finally, Sarna receives availability pay for remaining on call, which is not the case with Local 1313 unit members. (Tr. 54). While unit members accrue service days (i.e., personal days) based on their time with the Company, Sarna is instead eligible for Unisys's occasional absence policy, which is not available to Local 1313 unit members. (EX 5; Tr. 57). In addition, Sarna is covered by a different, more lucrative short term disability plan. (Tr. 58). Sarna and the unit members do not share the same vacation policy. (Tr. 58-59). There is no community of interest exists with respect to pay and benefits.

7. <u>Differences in Organizational Structure and Supervision from Local 1313</u> <u>Bargaining Unit</u>

While Local 1313 unit members are supervised by Steen, Kiesel, Rodriguez, and Safranski, Sarna is supervised by Fisher-Smith, who does not supervise any Local 1313 unit

members. (Tr. 28, 30, 32, 47-48). In addition, Sarna is in a different department than Local 1313 unit members. (EX 8).

8. <u>In the Aggregate, the Factors Demonstrate that Sarna Lacks a Community of Interest with Local 1313 Unit Members</u>

While Petitioner asserts Sarna shares a community of interest based on the usual relation between production and plant clerical employees, the Board requires an examination of the "totality of the circumstances" rather than rote groupings of employees. See Turner Indus. Group, LLC, 349 NLRB at *20. Here, the totality of the circumstances clearly demonstrate that Sarna shares little in common with Local 1313 unit members. Further, plant clericals can constitute an appropriate unit by themselves. See, e.g., The Rudolph Wurlitzer Co., 117 NLRB 6 (1957); Plankington Packing Co., 111 NLRB 1225 (1956). Similar types of positions as that held by Sarna have been deemed properly excluded because of a lack of community of interest. See, e.g., Container Research Corp., 188 NLRB 586 (1971); Jelco, Inc., 209 NLRB 827 (1974); see also Pacific Southwest Airlines v. NLRB, 587 F.2d 1032 (9th Cir. 1978).

IV. <u>CONCLUSION</u>

Based on the foregoing, Unisys respectfully requests that Petitioner's request for review be denied.

Respectfully submitted,

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UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD REGION SEVEN

IN THE MATTER OF UNISYS CORPORATION,

Employer

Case No. 7-RC-23167

and

THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO,

Petitioner.

PROOF OF SERVICE

of Honigman Miller Schwartz and Cohn LLP, and that on June 19, 2008, she caused a copy of Unisys Corporation's Brief in Opposition of Petitioner's Request for Review and Proof of Service to be served via facsimile and Federal Express delivery upon Stephen A. Yokich, Esq., Cornfield and Feldman, 25 East Washington Street, Suite 1400, Chicago, IL 60602-1803 and upon Stephen Glasser, Regional Director, National Labor Relations Board, 477 Michigan Avenue, Room 300, Detroit, MI 48226.

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